A

PP

v.

JAYAPRAKASAN THANGAVEL

B

HIGH COURT MALAYA, IPOH
CHOONG SIEW KHIM JC
[CRIMINAL APPEAL NO: 42-14-2007]
17 SEPTEMBER 2009

C ***CRIMINAL PROCEDURE:*** *Appeal - Petition to appeal - Whether lodged out of time - Whether service of relevant documents sent to wrong address - Criminal Procedure Code, ss. 307(3), (5), (9), 310*

This criminal appeal from the decision of the Sessions Court judge was first mentioned on 14 September 2009 for a date to be fixed for D the hearing of the appeal. However, the respondent raised a preliminary objection on the ground that the petition of appeal was lodged out of time on 27 March 2009, one day after the 14 days' period allowable to file the petition after service of the grounds of decision and notes of evidence on the appellant. The E respondent relied on s. 307(5) of the Criminal Procedure Code by submitting that this failure to comply was fatal and by virtue of s. 307(9), the appeal shall be deemed to have been withdrawn. The appellant argued that service of the grounds of decisions and notes were sent to the wrong address *ie*, Ibu Pejabat Badan Pencegah F Rasuah Perak ('BPR Perak') and were subsequently forwarded and received by BPR Putrajaya on 16 March 2009. It was argued by the appellant that the petition was not filed out of time since they effectively received the grounds and notes at the address mentioned in the notice of appeal on 16 March 2009. G

Held (overruling respondent's preliminary objection):

(1) By the literal, plain and clear meaning of s. 307(3), it was mandatory for the grounds of decision to be served at the H address mentioned in the notice of appeal. A court appealed from must abide by this provision without any exception in order to render service wholly effective. It was clear in this case that service of the said documents was effected at the wrong address on 12 March 2009 over which the respondent took issue I with regard to the time-frame to file the petition of appeal. (para 5)

(2) It was plain common sense and expeditious for BPR Perak to forward the documents to the correct address at BPR Putrajaya. Based on the receipt stamp, BPR Putrajaya received them on 16 March which meant that when the petition of appeal was lodged on 27 March 2009, they were still very much within the 14 days' period. In any event, there is ultimately yet a saving clause in the form of s. 310 of the Criminal Procedure Code that is applicable in situations of non-compliance with any formality or requirement as laid down in the Code that allows a judge to hear an appeal in order that substantial justice may be done. (para 6)

Legislation referred to:
Criminal Procedure Code, ss. 307(3), (5), (9), 310

For the appellant - Mohd Asnawi Abu Hanipah DPP
For the respondent - V Santhiran; M/s Charanjit, V Santhiran & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Choong Siew Khim JC:

[1] This criminal appeal from the decision of the learned Sessions Court judge, Teluk Intan, was first mentioned before me on 14 September 2009 for a date to be fixed for the hearing of the appeal. However learned counsel for the respondent En V Santhiran raised a preliminary objection on the ground that the petition of appeal was lodged out of time on 27 March 2009, one day after the 14 days' period allowable to file the petition after service of the grounds of decision and notes of evidence on the appellant. He referred to a letter dated 10 September 2009 from the said Sessions Court whereby he was informed that 12 March 2009 was the date the grounds of decision and notes of evidence were received by the appellant. Fourteen days started to run from 12 March 2009 and therefore it was imperative for the appellant to lodge the petition of appeal by 26 March 2009. He relied on s. 307(5) of the Criminal Procedure Code by submitting that this failure to comply was fatal and by virtue of s. 307(9), the appeal shall be deemed to have been withdrawn. Section 307(9) of the Criminal Procedure Code reads:

[2] If a petition of appeal is not lodged within the time prescribed by this section the appeal shall be deemed to have been withdrawn and the trial court shall enforce its sentence or order if any stay of execution has been granted, but nothing herein contained shall be deemed to limit or restrict the powers conferred upon a judge by s. 310.

[3] The matter was adjourned to today, 17 September 2009, to allow the learned deputy public prosecutor to obtain confirmation as to the actual date the grounds and notes were received. There arose some confusion with regard to the date and on whom those were served. Encik Hasnawi for the appellant submitted that with reference to s. 307(3) of the Criminal Procedure Code, the grounds of decision shall be served upon the appellant at the address mentioned in the notice of appeal. Section 307(3) reads:

[4] When a notice of appeal has been lodged the court appealed from shall make a signed copy of the grounds of decision in the case and cause it to be served upon the appellant or his advocate by leaving the said copy at the address mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the said address.

[5] It is stated in the notice of appeal that the address of service on the appellant is "Timbalan Pendakwa Raya, Ibu Pejabat Badan Pencegah Rasuah Malaysia, Aras 6, Blok D6, Pusat Pentadbiran Kerajaan Persekutuan, Peti Surat 6000, 62502 Putrajaya, Wilayah Persekutuan Putrajaya". The word "shall" in s. 307(3) made service of the grounds of decision at the notified address mandatory. As such the Teluk Intan Sessions Court had to serve the grounds as well as the notes (with reference to s. 307(5)) upon the appellant at this address. However these were instead sent to BPR Perak at Ipoh. It was not denied by the appellant that the grounds and notes were received by BPR Perak on 12 March 2009 going by a note written on the letter from the Sessions Court dated 10 March 2009. Based on a receipt chop on the same letter, the grounds and notes were subsequently forwarded and received by BPR at Putrajaya on 16 March 2009.

[6] It was argued by the appellant that the petition was not filed out of time since they effectively received the grounds and notes at the address mentioned in the notice of appeal on 16 March 2009. The respondent persisted with his contention that 12 March 2009 was the effective date of service as it was served on the officer of

BPR Perak being the person who was mentioned as representing the prosecution at p. 121 of the appeal record. It was further submitted that the appellant in a way had acquiesced to being served on 12 March 2009 by not lodging any objection about and against the service.

[7] After having considered the submissions by the two parties, I am inclined to agree with the learned deputy that going by the literal, plain and clear meaning of s. 307(3), it was mandatory for the grounds of decision to be served at the address mentioned in the notice of appeal. It is my view that a court appealed from must abide by this provision without any exception in order to render service wholly effective. In this case, it is clear that service of the said documents was effected at the wrong address on 12 March 2009 over which the respondent took issue with regard to the time-frame to file the petition of appeal.

[8] It was only plain common sense and expeditious for BPR Perak to forward the documents to the correct address at BPR Putrajaya. Based on the receipt stamp, BPR Putrajaya received them on 16 March which meant that when the petition of appeal was lodged on 27 March 2009, they were still very much within the 14 days' period. If BPR Perak had returned the documents to the Sessions Court for bad service, it most probably would have taken a longer time and route for the Sessions Court to serve the documents on BPR at Putrajaya. Notwithstanding and in any event, there is ultimately yet a saving clause in the form of s. 310 of the Criminal Procedure Code that is applicable in situations of non-compliance with any formality or requirement as laid down in the Code that allows a judge to hear an appeal in order that substantial justice may be done.

[9] In concluding, the preliminary objection raised by the respondent is overruled and a date is to be fixed for the hearing of the appeal proper.